****

FAQ ON NATIONAL FIREARMS ACT WEAPONS

This is accurate, to the best of my knowledge, as of 3/29/97. Nothing written here should be taken as legal advice. If you have a legal problem, you should talk to a lawyer.

Table of Contents

GENERAL INFO ON NFA WEAPONS

Key to Abbreviations

AOW - any other weapon
ATF - Bureau of Alcohol, Tobacco and Firearms
ATT - Alcohol and Tobacco Tax Division of the IRS, the pre-68 administrators of the NFA
C&R - curio and relic
CFR - Code of Federal Regulations
DD - destructive device
FET - federal excise tax
FFL - federal firearms license
GCA - Gun Control Act
NFA - National Firearms Act
SOT - special (occupational) taxpayer
USC - United States Code
DEWAT - De-activated war trophy

What are NFA Weapons?

There are two kinds of firearms under U.S. (federal) law, title 1 firearms and title 2. Title 1 firearms are long guns (rifles and shotguns), handguns, firearm frames or receivers, and most NFA weapons are also title 1 firearms. Title 2 weapons are NFA weapons. Title 2 of the 1968 Gun Control Act is the National Firearms Act (26 USC sec. 5801 et seq.), hence NFA. Title 1 is generally called the Gun Control Act, (18 USC sec. 921 et seq.). NFA weapons are sometimes called class 3 weapons, because a class 3 SOT (see below) is needed to deal in NFA weapons.

These weapons may also be further regulated by states or

localities, and while these weapons can be legally owned under federal law, some states and localities further regulate ownership or prohibit it (see below). The NFA Branch of ATF administers the National Firearms Registration and Transfer Record, which necessarily encompasses most of the NFA regulation.

NFA weapons are: machine guns, sound suppressors (a.k.a. silencers), short barreled shotguns, short barreled rifles, destructive devices and "any other weapons". A machine gun is any gun that can fire more than one shot with a single pull of the trigger, or a receiver of a machine gun, or a combination of parts for assembling a machine gun, or a part or set of parts for converting a gun into a machine gun. A silencer is any device for muffling the gunshot of a portable firearm, or any part exclusively designed or intended for such a device (see discussion below). A short barreled shotgun is any shotgun (shoulder fired, smooth bore) with a barrel of less than 18" or an overall length of less than 26", or any weapon made from a shotgun falling into the same length parameters. A short barreled rifle is a rifle (shoulder fired, rifled bore) with a barrel length of less than 16", or an overall length of less than 26", or any weapon made from a rifle falling into the same length parameters (like a pistol made from a rifle). In measuring barrel length you do it from the closed breech to the muzzle, see 27 CFR sec. 179.11. To measure overall length do so along, "the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore." 27 CFR sec. 179.11. On a folding stock weapon you measure with the stock extended, provided the stock is not readily detachable, and the weapon is meant to be fired from the shoulder. A destructive device (DD) is a explosive, incendiary or poison gas weapon, or any firearm with a bore over 1/2", with exceptions for sporting shotguns, among other things (see discussion below). Any other weapons (AOW's) are a number of things; smooth bore pistols, any pistol with more than one grip,(but see below) gadget type guns (cane gun, pen gun) and shoulder fired weapons with both rifled and smooth bore barrels between 12" and 18", that must be manually reloaded (see discussion below). These definitions are simplified, to see if a specific gun is a title 1 or 2 firearm one needs to refer to the specific definition under the statute(s), and possibly consult with the Technology Branch of ATF. There is also case law on the issue of whether a specific item falls into one of these categories.

Owning or making an NFA weapon

It is illegal for anyone to have possession of an NFA weapon that is not registered to them in the NFA Registry. It is also not possible for anyone, except government entities, to register an existing NFA weapon that is not registered, except immediately after one is made by a class 2 NFA manufacturer. An individual otherwise able to own any gun under federal law can receive and own any NFA weapon (local law permitting, ATF cannot approve a transfer where federal, state or local law would be violated by the transferee possessing the weapon in question, see 26 USC sec. 5812(a)(6)) on a Form 4, "Application for Tax Paid Transfer and Registration of Firearm". Non-FFL holders may only purchase an

NFA weapon from a dealer or individual within their own state. If the weapon is located out of state it must be transferred to a class 3 dealer within the state, before transfer to the non FFL purchaser. C&R FFL holders (type 03) may purchase C&R NFA guns from out of state dealers and individuals. Type 01 FFL holders may purchase any fully transferrable (no dealer samples, see below) NFA weapon, from an out of state source. If the FFL holder is an individual he must submit fingerprints, photograph, and the law enforcement certification.

The transfer involves paying the transfer tax, which is $200 for all the NFA weapons, except AOW's for which the tax is a mere $5. Individuals also have to get one of several specified local chief law enforcement officers to sign the form (see the section on the law enforcement certification for more information), submit their fingerprints in duplicate, and attach photos of the transferee to the form. While the transfer tax is levied by law on the transferor (seller), in practice the transferee (buyer) is expected to pay the tax. Transfers to individuals tend to take at least 4 months, although subsequent transfers can be quicker.

Or you can make any NFA weapon, except for machine guns (see below), by filing a Form 1, "Application to Make and Register a Firearm", and paying the $200 making tax, which applies to all of these weapons, including AOW's. You may not make the proposed weapon until the Form 1 is returned to you approved. The law enforcement certification, photos and fingerprints also apply to Form 1's, and in fact to any transfer to an individual. Additionally the manufacturer of any NFA weapon, including an individual making one on a Form 1 must mark the receiver of the weapon with the maker's name and city and state. NFA Branch can grant exemptions from this for DD's. All types of corporations, including corporate type 01 FFL holders, need not do the certification, photo and fingerprint requirements. Any of the forms listed, and the fingerprint cards, are available for free from ATF, either in Washington, D.C. or your local office.

The original of the paperwork, particularly any that have tax stamps on them (Form 1 or 4) should be kept in a safe place. ATF can demand to see the form (see below on your 4th amendment rights). On a tax paid transfer, ATF puts a tax stamp, like a postage stamp (or like the one that caused the American colonists to take up arms), on the document. You paid $200 (or $5) for it, and it is worth that. It is unwise to lose the original form. They should be kept in a safe deposit box. Tax exempt forms (Form 2, 3, 5, 6, 10) have no tax stamp, and a copy of the form from ATF, should the original be lost, will be fine. ATF can give you a new tax stamp should you lose one, but expect a hard time, and they have discretion in doing it. It is not unheard of for ATF to have no record in their computer of a weapon registered to you. The paperwork can avoid a lot of hassles. Additionally, if the gun in question is a machine gun, not having the paperwork can lead to being charged with a violation of 18 USC sec. 922(o). A federal circuit court of appeals has ruled (U.S. v. Just, 74 F.3d 902 (8th Cir. 1996)) that sec. 922(o) prohibits possessing all machine guns, and it is an affirmative

defense to such a charge that the weapon was legally possessed before it took effect. It is up to the defendant to prove such a defense, but usually by a lower evidentiary standard than the government needs to prove to show a criminal violation (usually preponderance of the evidence versus beyond a reasonable doubt). It is not up to the government to prove the weapon was not registered, for a charge under sec. 922(o). If you don't have the paperwork, and it isn't in ATF's computer, (it is likely they will check, even though they don't have to prove non-registration, they don't want someone to wave a registration form in their face during a trial) you can have a serious problem.

Taxpayer privacy

The transfer paperwork is nominally a tax return; the purpose of the registration, and the National Firearms Registration and Transfer Record (Registry) is keeping track of who owes the tax. ATF takes the position that taxpayer privacy laws apply to a transfer form, and that they may not discuss a pending transfer with anyone but the taxpayer, who is the transferor (seller), as he is responsible for the tax by law. This also serves to allow ATF to refuse to discuss why a transfer is taking so long with the party who is most interested in that question, the transferee (buyer). However, in another context (releasing information under the Freedom of Information Act) ATF has decided that as to a Form 4, the tax form is a joint return between the transferor and transferee, (see 1980 Auto Ordnance Corp. memo) so in that case the transferee should be entitled to the information about the application on the same basis as the transferor. That is not the usual practice, however. The NFA also prohibits the use of Registry information obtained from natural persons (only) for any law enforcement purpose except prosecutions for making a false statement on a transfer form (26 USC sec. 5848). Other tax laws prohibit the release of transfer information, as a tax return, except for certain narrow law enforcement type circumstances. See 26 USC sec. 6103.

However, as most NFA weapons are also regulated by the GCA, purchases from a dealer require the completion of the standard 4473 yellow form, as well as dealer bound book records, and this source of information is not so similarly restricted. ATF may release this information to local law enforcement for a host of law enforcement purposes. (18 USC sec. 923(g)(1)(D)).

Tax exemptions

Law enforcement, states, and local governments are totally exempt from the making and transfer (either to or from) taxes, but must comply with the registration requirements. While the NFA only specifically provides that there is no transfer tax due when the US government is the transferee, (26 USC sec. 5852(a)), or a state governmental entity (26 USC sec. 5853(a)), ATF has made up an exemption from the transfer tax where any US or state governmental entity is the transferor, see ATF Chief Counsel Opinion numbers 20023 and 20400. Abuse of that exemption, as in transferring guns through governmental entities so as to avoid transfer taxes, has been prosecuted. See U.S. v. Fleming, 19 F.3d 1325 (10th Cir. 1994).

Federal government agencies, the military, and National Guard need not comply with the registration or tax requirements, and generally speaking NFA Branch removes weapons from the Registry once they are transferred to the federal government.

There is no tax on transfers to anyone of a weapon that is unserviceable. Making a weapon unserviceable means it is permanently altered so that it cannot work, and is not readily restorable. For example a gun can be made unserviceable by welding the chamber closed, and welding the barrel to the receiver or frame. An unserviceable weapon is sometimes called a DEWAT, for DE-activated WAr Trophy (see below).

There is no tax on a transfer to a lawful heir from the owner's estate. Lawful heir just means someone named in a will to get the weapons, or a person entitled to inherit under the applicable intestacy laws if there was no will, or the will did not apply. The heir must be able to own the weapon under state and federal laws. The heir will have to do all the other steps of a transfer to an individual. Unless the heir is a class 3 he may not inherit post-86 machine guns (and would also need the police demo letter, see below). ATF is supposedly now allowing non licensed heirs to inherit pre-86 sample guns, a change from past policy. A weapon to an heir may also be transferred interstate, if need be; the gun need not be transferred to a dealer in the heir's state, if the deceased owner resided in another state.

Special (Occupational) Taxpayers (SOT) under the NFA are exempt from some of the making or transfer taxes. All SOT holders may transfer weapons between themselves tax free. However a transfer between an individual and a SOT will require the tax. And unless one has a class 2 SOT, there is a tax on making an NFA weapon, except for making by or on behalf of a government entity. Sole proprietor SOT's need not get the law enforcement certification for any transfer, except DD's (unless they have the appropriate FFL), even for their own personal collection, although in that case they should pay the $200 transfer tax. They also need not attach a photo to the transfer paperwork, nor submit fingerprints. The Crime Bill (9/14/94) now requires these things with FFL applications, and SOT applications, however, and ATF was requiring them even before that became law, since early 1994. If one plans to engage in business in NFA weapons, one needs to be a SOT, just as one needs the FFL if they plan to engage in the business with regular firearms or ammunition.

The classes of SOT holders

1 - importer of NFA firearms
2 - manufacturer of NFA firearms
3 - dealer in NFA firearms

A class 1 or 2 SOT may also deal in NFA firearms. A class 3 SOT costs $500 a year, due each July 1. A class 1 or 2 SOT costs $1000 a year, except that SOT's who did less than $500,000 in gross receipts in business the previous year qualify for a reduced rate of $500 per year, also due July 1. One must also

have the appropriate FFL to engage in the specific activity, as well as the SOT. This is because most NFA weapons are also title 1 weapons, and thus both the law regulating title 1 weapons (the GCA) and title 2 weapons (the NFA) must be complied with. As with the privacy of Registry information and transfer information, SOT status is also protected tax information, and ATF will not release lists of SOT holders, as they will of FFL holders.

A Class 2 SOT can make, tax free, machine guns, silencers, short rifles, short shotguns or AOWs. A class 2 can also have weapons transferred to him tax free, by other SOT's. He also has to have a type 07 or type 10 FFL. He does not need to ask prior permission of ATF to make a weapon, he would notify ATF of its making within 24 hours of its making by filing Form 2 with ATF. He could also import foreign made NFA weapons, for R&D use (one of each, not a bunch of each model). To import a machine gun (only) a class 2 would need a letter from a governmental entity able to own the weapon requesting a demonstration. A weapon imported for R&D must be exported or destroyed when the R&D is completed, whereas a weapon imported for sale to a government entity would be considered pre-86 dealer samples. To import for sale to government entities you need a Class 1 SOT.

A sole proprietor SOT may keep any NFA weapon he has after surrendering his SOT, as his personal property, except post-86 machine guns, discussed below. If ATF thinks, based on the number of weapons retained and the timing, that your SOT status was used to evade the transfer taxes, they may demand tax on all or some of the guns, although you will be entitled to a credit against that for your annual $500 or $1000 SOT tax. Conceivably you could also be prosecuted for tax evasion.

Special treatment of certain weapons

Destructive devices are treated differently, in terms of manufacturing or dealing. One must have a special FFL, (type 9, 10 or 11, to deal, make or import respectively) and be a SOT to make one tax free or deal in them. But anyone can make them on a Form 1, tax paid.

Machine guns are also treated differently. In 1986, as part of the Firearm Owners' Protection Act (FOPA), Congress prohibited individuals from owning machine guns, and made it an affirmative defense that the machine gun was registered before the act took effect (which was 5/19/86). See 18 USC sec. 922(o) for the law. Thus as an individual you can only legally own a machine gun that was registered before that date. Any registered after that date can only be owned by SOT's, law enforcement, and government entities. A SOT may not keep these machine guns after surrendering his SOT. In order to transfer one of these machine guns, the SOT must have a request from an agency able to own one for a demonstration. Or an order from one of those agencies to buy one. A class 2 SOT can make machine guns for research and development purposes, or for sale to dealers as samples, or for sale to government entities. These are commonly called post-86 machine guns.

On top of the FOPA machine gun restrictions, any NFA weapon imported into the US after the Gun Control Act took effect (end of 1968) cannot be transferred to an individual. See 26 USC sec. 5844. They can be transferred to SOT's, without any police demonstration request, and kept by the SOT after surrendering his SOT. These are sometimes called "pre-86 samples", or "dealer samples", although dealer sample can be used to refer to either a post-86 machine gun or any NFA weapon imported after 1968.

Transporting NFA firearms

In terms of moving the weapons around, the following applies. If you are transporting the weapons within your state, it is wise to keep a photocopy of the registration paperwork, whatever it is, (can be Form 1, 2, 3, 4, 5, or 10, as well as other more exotic forms of registration, except you probably would never have a gun on a Form 10, unless you were the police, in which case no one is likely to hassle you about a gun you might have anyway) with the gun. Federal law does not expressly require it, but it would be foolish not to have ready proof the gun is legal. Many states do require it, they ban all or some NFA weapons, and exempt from the ban those possessed in compliance with federal law. In such a state you need the federal paperwork to be legal under state law. If you were a SOT you should keep a copy of your proof of being an SOT with the paperwork when you move the guns around. But an individual who surrenders his SOT can still have weapons that will be registered on a Form 2 or Form 3 legally, so not having a copy of the SOT with such paperwork proves nothing. You need not ask ATF for permission when you move to a new address within the same state, nor must you advise them of your new address.

To move weapons between states two rules apply. An individual must get permission from ATF to move machine guns, short rifles, short shotguns or destructive devices between states (or to temporarily export them) before doing so. This includes taking them somewhere to shoot them, or when moving. There is a form called a 5320.20, and ATF will always approve them, and fairly quickly, assuming the purpose (generally stated) for the movement is legitimate, and the target state allows the weapon in question. A type 01 FFL can move weapons (except DD's) interstate at will, no permission is needed. But while most states that otherwise prohibit some or all NFA weapons have exceptions for SOT's, or FFL's, a few do not, and thus the person must make sure he will not be breaking any laws. An unlicensed individual need not ask permission to move AOW's or suppressor's interstate, again watch the laws at the target state. Having the approved 5320.20 form for a suppressor or AOW can avoid hassle while traveling. Lots of folks who think they know something about the NFA don't know you only need permission for interstate movement of some NFA weapons. ATF will approve a 5320.20 for suppressors and AOW's; they will approve a 5320.20 for an FFL also, even if he doesn't need it by law. ATF will also now approve a form 5320.20 for a period of one year, covering blanket travel to a specific location, if you travel there frequently. A C&R FFL holder can only move C&R NFA guns

interstate without a 5320.20. See 18 USC sec. 922(a)(4) for the law imposing the 5320.20 requirement.

A lost or stolen NFA firearm

A lost or stolen NFA firearm can be a real problem. It can be a very expensive loss, as well as endangering the continued lawfulness of owning NFA firearms, both at a state and federal level. Contrary to what you might hear, NFA firearms, machine guns and silencers in particular, are very rare in crime. A significant source of such weapons in crime is stolen NFA firearms, from law enforcement, the military and civilian collectors. A crime spree with a stolen NFA firearm can lead to restrictive state or local legislation, as well as local law enforcement refusing to continue providing the law enforcement certification needed for transfers to individuals. Safeguarding NFA firearms is not required, but seems to me to be extremely prudent, both to preserve the firearm, as well as its continued legal ownership. Reporting the theft of an NFA weapon to law enforcement is the only way to even have a chance at recovering the gun, and preventing its use (or further use) in crime. I think reporting its theft is a good idea. Below is what is required, as opposed to what is a good idea.

ATF has made up a rule, 27 CFR sec. 179.141, that requires the owner of a lost or stolen NFA weapon to make a report "immediately upon discovery" to ATF including the name of the registered owner, kind of firearm, serial number, model, caliber, manufacturer, date and place of theft or loss and "complete statement of facts and circumstances surrounding such theft or loss." However Congress has passed no law authorizing ATF to make such a requirement, and at a 1984 Congressional hearing then ATF Director Stephen Higgins admitted there is no penalty for not complying. See "Armor Piercing Ammunition and the Criminal Misuse and Availability of Machineguns and Silencers", Hearings Before the Subcommittee on Crime of the Committee of the Judiciary House of Representatives, Ninety-Eighth Congress, Second Session, May 17, 24 and June 27, 1984, Serial No. 153, G.P.O. 1986, page 129.

However, if one is a FFL holder, one is required by law to report the theft or loss to both local law enforcement and ATF. As part of PL 103-322 (Crime Bill) (9/13/1994), 18 U.S.C. sec 923(g) was amended to require, "(6) Each licensee shall report the theft or loss of a firearm from the licensee's inventory or collection within 48 hours after the theft or loss is discovered, to the Secretary and to the appropriate local authorities."

ATF has created interim rules to implement PL 103-322, and they are a little more specific, and a little more onerous:

27 CFR Sec. 178.39a Reporting theft or loss of firearms.

> Each licensee shall report the theft or loss of a firearm from the licensee's inventory (including any firearm which has been transferred from the licensee's inventory to a personal collection and held as a personal firearm for at

least 1 year), or from the collection of a licensed collector, within 48 hours after the theft or loss is discovered. Licensees shall report thefts or losses by telephoning 1-800-800-3855 (nationwide toll free number) and by preparing ATF Form 3310.11, Federal Firearms Licensee Theft/Loss Report, in accordance with the instructions on the form. The original of the report shall be forwarded to the office specified thereon, and Copy 1 shall be retained by the licensee as part of the licensee's permanent records. Theft or loss of any firearm shall also be reported to the appropriate local authorities.

Sec. 178.129 Record retention.

* * * * *

(b) Firearms transaction record, statement of intent to obtain a handgun, reports of multiple sales or other disposition of pistols and revolvers, and reports of theft or loss of firearms.

* * * * * *

Licensees shall retain each copy of Form 3310.11 (Federal Firearms Licensee Theft/Loss Report) for a period of not less than 5 years after the date the theft or loss was reported to ATF.

This reporting requirement only applies to FFL holders, that is folks licensed by ATF to make, sell, import or collect guns. This does not include folks who just own an NFA weapon.

Repairing NFA weapons

As it is illegal for anyone to have possession of an NFA firearm that is not registered to them, getting the guns repaired, or worked on, can be a hassle. There are two choices: if the gunsmith is in the same state as the registered owner the owner can take the gun in, and wait while it is worked on. If the owner cannot wait, the gun must be transferred to the gunsmith, on a Form 5, and returned to the owner by filing a Form 5 to transfer possession back to the owner. If one wishes to have an out-of-state gunsmith work on the gun, even if the owner can wait with the gun, the owner must either transfer it to the gunsmith, or file the form 5320.20 to move it interstate to the gunsmith. One need not be an SOT to have NFA weapons transferred to him for repair. One does need to have a type 01 FFL to work as a gunsmith though. NY, in a fit of benevolence, allows licensed gunsmiths there to receive machine guns for repair, when machine gun possession there is otherwise limited to the police, and manufacturers with government contracts. When submitting a Form 5 for repair one checks the "Other" box in item 1, type of transfer, writes in "repair" next to the box, and submits a letter detailing (generally, e.g. "The purpose of this transfer is to have the [weapon] refinished.") what is to be done. The back of the form, with the certifications and photograph need not be completed. The turnaround time on Form 5's for this purpose seems to be at least a month, or a minimum wait of two months, to transfer it to the 'smith and back. There is no transfer tax.

Penalties for NFA violations

A violation of the NFA can result in a felony conviction, punishable by up to ten years in prison, and/or a $250,000 fine. See 26 USC sec. 5871. The US Sentencing Guidelines ordinarily require prison time, even for a first offense, however various mitigating and aggravating factors can raise or lower the possible sentence range for a first offense.

The statute of limitations on violations of the NFA is three years, with the possibility of extension of that time to six years for some wilful violations. See 26 USC sec. 6531. The statute of limitations does not begin to run on possession offenses until the possession stops. As long as you possess the contraband item, you are in danger of being prosecuted.

In addition any NFA weapon EVER transferred or registered in violation of the Act is subject to civil forfeiture. See 26 USC sec. 5872. A forfeiture proceeding is separate from any criminal prosecution, and a resolution of a criminal proceeding in favor of the defendant will not preclude a forfeiture action. See U.S. v. One Assortment of Eighty-Nine Firearms, 465 U.S. 354 (1984).

A violation of 18 USC sec. 922(o) of the GCA can also bring up to a ten year prison sentence, and or a $250,000 fine. Again, prison time is likely, even on a first offense. Using a machine gun or a silencer in a crime can result in a sentencing enhancement of thirty years, even if there is no NFA prosecution. See 18 USC sec. 924.

In short, these are serious penalties. NFA regs are a pain, and in my opinion, contrary to the Constitution. Ignore them, and get caught, and you will pay a very high price.

Additional info sources

One of my main sources of information is a magazine called Machine Gun News. It is quite good for sorting out the intricacies of the law, as well as info on guns, suppressors and other NFA stuff. Well worth a subscription, I think. Costs $34.95 for a 1 year subscription (12 issues) from, P.O. Box 459, Lake Hamilton AR 71951. Or call (501) 525-7514. They can take your MasterCard or Visa over the phone. They also put out a book called the "Machine Gun Dealer's Bible", by Dan Shea, for $64.95 plus $4 shipping.

Another good source of information is the ATF publication, "Federal Firearms Regulations Reference Guide" ATF P 5300.4 (10-95). It contains the GCA, NFA, and the regulations promulgated under those laws, as well as other useful information. Unlike the old "Red Book", (this has a yellow cover), this one has the Crime Bill, and Brady law in it. It also has the Brady regulations, and the interim Crime Bill regulations. ATF also publishes a compilation of state laws, "State Laws and Published Ordinances-Firearms", ATF P 5300.5 (10/94). Both are free from ATF. To get forms, or the books, you can write to ATF Distribution Center, PO Box 5950, Springfield, VA 22150-5950. Or phone them at (703) 455-7801. Or your local ATF office should be able to supply them also.

Some handy ATF phone numbers:

NFA Branch (202) 927-8330 - This is the office that handles all transfers of NFA weapons, and maintains the Registry.
NFA Branch FAX (202) 927-8601 - You can fax Form 2's and 3's in, Form 5 transfers for repair, 5320.20's and probably others as well. Check with NFA Branch to be sure your faxed form will be acceptable. Also see ATF Ruling 89-1.
Technology Branch (202) 927-7910 - This is the office that makes all determinations as to whether something falls into one of the NFA categories, as well as determinations as to importability, and many other technical issues to things regulated by ATF (at least as to firearms).
Import Branch (202) 927-8320 - This office handles permits to import firearms, parts and other related items regulated by federal law.

GETTING THE LAW ENFORCEMENT CERTIFICATION

There are several solutions to the law enforcement certification problem. They all require persistence, but less work than being a legitimate NFA dealer, in my opinion. Becoming a class 3 dealer is one solution though. Another solution is to be incorporated. If you are a professional and are already incorporated for your job (doctor, lawyer) your corporation can buy NFA weapons, and the photo, police signoff and fingerprints are not needed. Just a Form 4. The corporation might be buying weapons for an investment, or for security, or for another good reason. You could incorporate yourself just to get NFA weapons also, although you should talk to a lawyer or another knowledgeable person about the downsides of being incorporated before just doing it. As the weapons are registered to the company, and not the owner of the company, they will have to be transferred out, tax paid (unless the transfer is otherwise exempt from the tax, ie from a government entity, or for an unservicable weapon), if the corporation is ever dissolved. As corporate assets, creditors might get them in the event of bankruptcy of the corporation, or a judgment against the corporation.
In my opinion the best thing is to have the weapons owned and registered to the person who actually owns them, and not an intermediary. I also am aware that in some areas of the country the incorporation route may be the only way to own NFA weapons, as a practical matter. Also be aware that corporations have no 4th amendment right against self-incrimination, and the restrictions the NFA places on the use of information provided to ATF under the Act (26 USC sec. 5844) only apply to information provided by natural persons, not corporations. You are giving up some of the privacy provided by law to flesh and blood people when you acquire your guns through a corporation.

Pretending you live in a jurisdiction where the CLEO will sign, when you do not, may be tempting, but cannot be recommended. ATF has prosecuted for this, claiming that putting a bogus address on the form is submitting false information to the feds, in violation of 26 USC 5861(l). See U.S. v. Muntean, 870 F.Supp 261 (N.D.Ind. 1994), for a case of such a prosecution. While you may have addresses

in several places, if you do not think you can make a credible case that you live there (do you sleep there? Have a phone? Utilities?) I think it is unwise to tell ATF you reside there, for purposes of a transfer form.

The below process is what the law and ATF regulations contemplate as the way to get a signoff, if you need one.

Step 1: You ask the following persons if they would sign; the local chief of police, the local sheriff, the local district (prosecuting) attorney, the chief of the state police, and the state Attorney General. The CLEO can delegate the signing duty, for his convenience. Insist they refuse in writing, if that is what they will do. You may be surprised, one might sign. Assume they all refuse. That list of persons comes from 27 CFR sec. 179.85, which is the regulation that created the law enforcement certification requirement for Form 4's. 27 CFR sec. 179.63 is the companion regulation for Form 1's. It is NOT in any statute passed by Congress. Although not listed, and ATF will NOT designate federal officials as also acceptable (see below) other persons whose certification has been acceptable in the recent past include; local U.S. Attorney's, local federal judges, local U.S. Marshals, and local F.B.I. agents. Other local federal law enforcement agents might also work, like DEA or ATF (imagine accepting their own certification!) or Secret Service. The federal law enforcement agents should probably be in a supervisory capacity, like the head of the field office or similar post.

It is helpful, in general, to quote the certification text, that is what you are asking them to certify. For a Form 4 it reads, "I certify that I am the chief law enforcement officer of the organization named below having jurisdiction in the area of residence of (name of transferee). I have no information that the transferee will use the firearm or device described on this application for other than lawful purposes. I have no information indicating that the receipt and/or possession of the firearm described in item 4 of this form would place the transferee in violation of State or local law."

Step 2: Copy the refusal letters, and send the copies to the NFA Branch of ATF. Ask them to designate other persons whose signature would be acceptable, as the ones listed in the regulation would not sign. They are required to do this by the same regulation, it is the safety valve for when none of the designated persons will sign. ATF will almost certainly say that they will accept the certification of a state judge who has jurisdiction over where you live (same as the chief, D.A. and sheriff in step 1, they have to have jurisdiction over where you live) and who is a judge of a court of general jurisdiction, that is a trial court that can (by law) hear any civil or criminal case. No limit as to dollar amount in civil cases, or type of crime in criminal cases. No small claims court or traffic court type judges, in other words. Let's assume they refuse.

Step 3: get back to ATF, Send them copies of the rejection

letters, and ask that they accept a letter of police clearance, or a police letter saying you have no criminal record/history with them, in lieu of the certification, together with your certification that you are OK, and that the weapon would be legal for you to have where you live. They will either respond OK, or with more persons to try. If you reach the point where they will not accept the police clearance letter, and not designate someone who has not turned you down, you can sue, if the certification is for a Form 1, or the transferor (seller) on a Form 4 can sue.

There are two cases on this issue. The first is Steele v. NFA Branch, 755 F.2d 1410 (11th Cir. 1985), where the 11th circuit federal appeals court said a person trying to transfer a gun to one who was otherwise eligible to own the gun, but could not get the certification from anyone acceptable to ATF, could sue to force the transfer without it. In the case Steele (the transferor in a Form 4 transfer) had not asked everyone acceptable to ATF, as well as not alleged, as part of his case, that the potential transferee was otherwise eligible by law to own the weapon, and the case was disposed of on those grounds. Note that the version of the regulation creating the certification requirement, reproduced in the footnotes of this case, has a different list of acceptable persons. After some were sued in connection with this case, all the federal law enforcement officials were removed from the regulation. Correspondence from ATF indicates they will not designate any federal officials as other acceptable persons either. The Steele decision was followed in the case Westfall v. Miller, 77 F.3d 868 (5th Cir. 1996), in which a transferee, not transferor, sued over non-approval of a Form 4 without the certification. Again Westfall did not ask everyone listed in the regulation. Again his case was thrown out for lack of standing. The court said they could not tell if the reason he couldn't get the gun was an illegal requirement, the signoff, or his own failure to try and get a signoff.

This certification is not really a big deal for the chief law enforcement officer (CLEO) making it, and it DOES NOT expressly make the CLEO legally responsible for the weapon or your use of it, or its theft. I have not heard of any successful case against a CLEO for signing the certification for a gun that was criminally misused. That is, in my opinion, a spurious excuse for not signing. There is even a case addressing this issue, Searcy v. City of Dayton, 38 F.3d 282 (6th Cir. 1994). The estate of a drug dealer murdered by an off duty Dayton, Ohio, police officer with his personally owned "Mac-11" machine gun sued the city that employed the cop. One of the grounds for suit was the police chief's having signed the transfer paperwork for the murder weapon. The court held that that claim should have been dismissed by the trial court; without a showing that somehow the act of signing was negligent, (under Ohio law) and led to the harm (murder) complained of, there was no cause of action. Signing the form was not negligent in itself, nor was it a reckless or wanton act, as the trial court claimed the plaintiff could try to prove at trial. Although this case is only directly binding on the area of the 6th circuit, and need not bind state courts, the court recognized what common sense, and the

certification say, the person signing does not open himself up to any liability by doing so.

The case is something to which you can point a CLEO who claims to refuse to do the signoff because of liability. Incidentally Stephen Halbrook, a leading lawyer in gun rights cases, and a longtime lawyer for the NRA, as well as an author, says in a note in Machine Gun News (3/95) this case is the only instance of a registered machine gun being criminally misused by its registered owner he is aware of. And it was by a police officer.

The key to getting the LE certification is persistence.

NFA WEAPONS AND THE 4TH AMENDMENT

As to surrendering your 4th amendment (search and seizure) rights, this is definitely true when one gets a Federal Firearms License. The law allows the ATF to inspect your records and inventory once every 12 months without any cause, and at any point during the course of a bona fide criminal investigation (18 USC sec. 923(g)). They may inspect without warning during business hours. The only modification of the above pertains to the C&R FFL (type 03) where ATF must schedule the inspection, (C&R FFL holders do not have business hours) and they must have the inspection at their office nearest the C&R FFL holders premises, if the holder so requests. ATF may look around the licensed premises for other weapons not on your records. This means they take the position that if your licensed premises are your home they may search it, as part of the annual compliance inspection. The constitutionality of the warrantless "administrative search" of licensees provided for in the Gun Control Act has been upheld by the US Supreme Court, see U.S. v. Biswell, 406 U.S. 311 (1972). Biswell was partially overturned by Congress by 1986 changes to the requirements for a warrant under the GCA, but the administrative search provisions remain.

In addition, if one is also a SOT, ATF claims to have the right to enter onto your business premises, during business hours, to verify compliance with the NFA. Their regulation to that effect is found at 27 CFR sec. 179.22. The regulation is apparently based upon 26 USC sec. 7606:

> 7606. Entry of premises for examination of taxable objects.
> (a) Entry during day.
> The Secretary may enter, in the daytime, any building or place where any articles or objects subject to tax are made, produced, or kept, so far as it may be necessary for the purpose of examining said articles or objects.
> (b) Entry at night.
> When such premises are open at night, the Secretary may enter them while so open, in the performance of his official duties.
> (c) Penalties
> For penalty for refusal to permit entry or examination, see section 7342.

As 26 USC sec. 7342 provides for the penalty for a refusal to permit entry under section 7606 it is worth a look:

> 7342. Penalty for refusal to permit entry or examination.
> Any owner of any building or place, or person having the agency or superintendence of the same, who refuses to admit any officer or employee of the Treasury Department acting under the authority of section 7606 (relating to entry of premises for examination of taxable articles) or refuses to permit him to examine such article or articles, shall, for every such refusal, forfeit $500.

They claims this right extends to examining your business records, and firearms. This would only apply to your NFA firearms, although they could presumably examine other guns to make sure they were not NFA firearms, and subject to the law. This is not subject to the controls found in the GCA, noted above, as the legal basis for the search is not found there. So they could claim a right to do this sort of search once a month, or once a week. I am not aware of any current abuse of the authority under this section. While the regulation made by ATF only applies this authority to SOT's, the statute itself is not so limited. At least one court case has suggested this power is available to search an FFL holder who is not an SOT. (U.S. v. Palmer, 435 F.2d 653 (1st Cir. 1970)).

As to one who is neither a FFL nor SOT, but only owns weapons regulated under the National Firearms Act, the law seems clear, but practice is a little murky. ATF may only compel you to show an agent upon request the registration paperwork, that is the Form 1, 2, 3, 4, 5 or whatever else might have been used to register the weapon. See 26 USC sec. 5841(e). They do not have any right to compel you to show them the weapon. However they apparently (I have no first hand knowledge) take the position that they can compel one to show ATF the weapon upon request, even if the owner has no FFL. As always the Fourth amendment applies, and ATF may not enter your home or other place of storage of the NFA weapon, nor seize the weapon, without a warrant, or without falling under an exception the Supreme Court has created to the operation of the Fourth amendment. They should also need a warrant to compel a non-FFL holder to show them the weapon, and I would insist upon that, myself.

AMNESTIES FOR UNREGISTERED NFA WEAPONS

As part of the new and revised 1968 National Firearms Act, there was one amnesty where folks could register any NFA weapons. It went from 11/02/68 to 12/01/68, although the paperwork backlog went on for a while after. According to 1995 ATF statistics (the number of firearms ATF reports as having been registered during the Amnesty goes up every year such statistics have been reported, although in 1975 ATF initially reported over 60,000 firearms registered during the Amnesty) 57,216
weapons were registered on Form 4467 ("Registration of Certain Firearms during November of 1968"), which was the amnesty registration form. This would have included weapons newly

subject to registration, when they had not been before, like DEWAT's and destructive devices, as well as contraband firearms that should have been registered before and were not. There was also a registration period after the enacting of the first NFA, from July 26, 1934 up to September 24, 1934. Anyone in possession of an NFA weapon as of the July 26 date was supposed to register it, even if they no longer had it, on Form 1 (Firearms) in duplicate, with the local IRS office. No tax was due. Not really an amnesty though, as the weapons were legal to have before the law was passed, at least under federal law. Some states had prohibited or regulated some NFA weapons before 1934. In fact the Uniform Machinegun Act, which provided for registration of machine guns, adopted in a few states (Conn., Va., Md., Ark., and Montana and possibly others) was developed with the support of the NRA, partly in an attempt to forestall the sort of regulation the feds ultimately adopted in 1934. Before the changes to the NFA in 1968, a Form 1 was for a flat out registration of an existing gun, no tax. A Form 1A was for a tax paid making, in the way we understand a Form 1 now.

Before the NFA was changed in 1968, as part of the Gun Control Act of 1968, one could register unregistered existing weapons, however it meant you were admitting to possessing an unregistered weapon. In fact the law required it, which was a reason the US Supreme Court used in gutting the registration scheme of the pre-68 NFA in Haynes v. US, 390 U.S. 85 (1968). (It violated the 5th amendment right against compelling self-incrimination.) However if there was no criminal intent to the possession (which tended to be demonstrated by attempting to register the weapon) then the Alcohol and Tobacco Tax Division of the Treasury Dept. would accept the application to transfer the weapon, or to register it. ATT generally sent an investigator to check out what was going on, and if deemed appropriate, to help the applicant fill out the Form 1. The Alcohol, Tobacco and Firearms Division of the IRS (created out of the '68 GCA, it became the Bureau of Alcohol, Tobacco and Firearms on July 1, 1972) continued this practice until 1971, with the transferor instead of the transferee admitting to possessing an unregistered weapon, when applying to transfer it.

The US Supreme Court, in the case U.S. v. Freed, 401 U.S. 601 (1971), decided the amended NFA made existing unregistered weapons unregisterable, even voluntarily. The provisions mandating registration of existing (illegally possessed) weapons were removed from the NFA in 1968, among other changes. The Secretary of the Treasury is authorized to conduct additional amnesties (Sec. 207(e) of P.L. 90-618, the 1968 Gun Control Act), at his discretion, provided each is not longer than 90 days, and are announced in the Federal Register. There has never been one. ATF officials have stated there will never be another Amnesty, because it would supposedly ruin all prosecutions in progress at the time, as well as increase the number of NFA guns overnight, because people will make guns that don't exist now, to register them.

In early 1994, ATF decided (in ATF Rulings 94-1 and 94-2) that three 12 gauge shotgun models, the USAS 12, Striker 12, and

Street Sweeper, were destructive devices, owing to their non-sporting character, and having a bore over 1/2 inch, as all 12 gauge shotguns do. ATF required owners of these guns to register them, as NFA weapons. This is not exactly an amnesty, as the weapons were not NFA weapons when made. While ATF has not required the payment of the $200 making/transfer tax to register them, they had required the registrant obtain the law enforcement certification on the registration paperwork (Form 1). According to the 7/95 Machine Gun News, NFA Branch has now dropped the requirement for the law enforcement certification on the initial Form 1 registration, subsequent transfers will be by regular NFA procedures. ATF began notifying owners of the guns on 2/1/94 of the classification decision, and gave them 30 days to register the weapon or dispose of it, after notice. Supposedly ATF calculated the 30 days from when the last owner (they could locate) of a weapon was notified. If you purchased the weapon privately, and there was no "forward trace" paper trail, then you may not have known when the 30 days began to run. However according to Machine Gun News, as of 7/95 ATF is still accepting registration applications. It would be wise to contact them before assuming they will not let you register such a gun, and either throwing it away, or just keeping it without complying with the registration procedures.

As this does constitute the addition of existing unregistered weapons to the Registry, in my opinion the Secretary should have used the amnesty procedures in the 1968 GCA. He did not because he did not want folks to be able to register any unregistered NFA weapon, there is not a procedure for limiting the scope of an amnesty (although I suppose the Secretary of the Treasury could have made one up, and let people sue him). However the fact that ATF chose not to either grandfather these shotguns, like they did with the open bolt MAC style semi-autos, or pre 11/81 AR-15 drop in auto sears, or have an amnesty, and require they be registered, in my opinion will cloud any attempts to prosecute persons possessing these weapons without having registered them.

In all likelihood 18 USC sec. 922(o), the ban on civilian possession of machine guns registered after the law took effect, or never registered, precludes an Amnesty (as provided for under existing law) for machine guns. You could register it, and comply with the NFA, but you would still be in violation of sec. 922(o), because the gun would have been registered after the law took effect. The penalties are the same under either law. One could register all other categories of NFA guns at an Amnesty. Congress could also pass a law providing for an Amnesty, and override 922(o) in that manner.

MACHINE GUN SEARS AND CONVERSION PARTS

The definition of "machinegun" in the NFA (26 USC sec. 5845(b)) includes parts to convert a gun into a machine gun. Note that conversion parts are not included in the definition of "firearm" under the Gun Control Act, one of the few things I know of that is a firearm under the NFA, but not the GCA. Thus the purchaser of a conversion part from an FFL need not do a 4473

form, unlike other NFA weapons. Of course the host gun, if purchased from an FFL, will require the 4473. This reading of the law is based on numerous statements from ATF, and the definition of "firearm" under the GCA, which requires it be able to expel a shot. However, at least one very slow judge has decided that somehow the definition of "firearm" in the GCA "incorporates" the definition of "machine gun" under the GCA (even though the law doesn't say that) and that a machine gun conversion part is a "firearm" under the GCA as well as the NFA. I think the judge is clearly wrong, even ATF reads the law better than that, but the point is to be careful. The case is U.S. v. Hunter, 843 F.Supp 235 (E.D. Mich. 1994), and see also the same judge's second opinion in the same case, at 863 F.Supp. 462 (E.D. Mich. 1994). These parts are called registered sears, as well as other parts or sets of parts to convert a gun into a machine gun.

In every case, the part(s) are installed into a semi-automatic gun, and without any alteration to the semi-auto gun's receiver, the new part(s) will allow the gun to fire as a machine gun. As a general rule a sear conversion is less desirable than an original gun, or a registered receiver conversion. This is because if the registered part breaks or wears out it cannot be replaced, only repaired, if possible. BATF considers replacing it with a new part to be the new manufacture of a machine gun, and a civilian could not own it, as it would have been made after the 1986 ban. This wear/breakage thing is also true of the receiver on a gun where that is the registered part, but in general the receiver is less subject to wear or breakage than a small part, like a sear. Being larger, a receiver may also be easier to repair. The sear conversion will most likely not be just like the factory machine gun version; it will be working in the semi-auto version of the gun. A registered receiver conversion can (and should, but isn't always) be mechanically identical to the original full auto version of the gun, and factory spare parts may be used. Some sear conversions require altered parts, in addition to the registered sear.

However for HK guns it is pretty much all there is, especially if you want an MP-5 type gun. And if you want a version of the Colt 9mm AR machine gun, the auto sear route is more plentiful than the few registered receiver conversions, and the even fewer factory Colt guns, as the model was introduced (1985) right around the same time as the 1986 ban. And in general the sear or other registered part is cheaper to buy than the same gun as a registered receiver, both because you aren't getting a gun also, and because it is less desirable. However you may find that due to the escalating value of the semi-auto host guns, the conversion part already installed in a host gun may cost as much as a registered receiver conversion of the same gun, like an IMI semi-auto UZI with a registered bolt installed versus a registered receiver UZI conversion. It pays to shop around.

A sear that does require alteration to the host gun's receiver is not a conversion part, and is not able to be registered as such. Some slipped by NFA Branch, in particular

AK-47 "sears" that required a hole be drilled in the gun's receiver, like a regular receiver conversion of the semi-auto AK. Such "sears" in the hands of innocent buyers were left on the Registry, with the requirement that they were not to be removed from the host gun, in effect converting them into receiver conversions in the eyes of BATF. However any in the possession of the persons who made and registered them were disallowed, and removed from the Registry. See Vollmer v. Higgins, 23 F.3d 448 (D.C.Cir. 1994) for mention of the AK sears. Also see FFL Newsletter, Summer Issue 1988, Bureau of Alcohol, Tobacco and Firearms, page 2, Washington, D.C.

Some examples of conversion parts; a SWD Auto Connector (for AR rifles), an AR-15 drop-in auto sear, an HK sear, as made by Fleming Firearms, J.A. Ciener, and S&H Arms, among others, a AUG sear as made by F.J. Vollmer and Qualified Manufacturing, an FN-FNC sear, as made by S&H, an M-2 conversion kit for the M-1 carbine, registered by many class 2's, a slotted UZI machine gun bolt, made by Group Industries, and many others, or a Ruger 10/22 trigger pack, as made by John Norell. There are also sears to convert Glock and Beretta 92 pistols into machine guns, but I believe all of them are post-86 manufacture, and thus unavailable to civilians.

As the sears do turn the host gun into a machine gun, the host gun is no longer regulated as a semi-auto, and is not subject to 18 USC sec. 922(v), (assault weapon law) or sec. 922(r) (ban on domestic assembly from imported parts of an unsporting semi-auto rifle or shotgun), for example. Thus you may put an HK sear in a post 1989 import ban SAR-8 rifle, for instance, and then put a regular pistol grip stock set on that otherwise thumbhole gun, as well as a regular slotted flash hider. The host gun need not even have been on the planet when the sear was made. This is how F.J. Vollmer keeps on cranking out MP-5's even though the new making of MG's for civilians was ended in 1986. As long as the sear is in there you may also have the barrel cut down to below 16 inches; a machine gun is not also a short barreled rifle. HOWEVER, if the sear is placed into a second gun, the first gun is no longer a machine gun, and must comply with the laws regulating it as a semi-auto. In my example, the barrel must grow back, and the thumbhole stock needs to return. If the sear in question is a AR-15 drop-in auto sear, the gun needs to have the M-16 internal parts needed for the sear removed as well, lest it be induced to fire more than one shot at a time, as was done in the U.S. v. Staples case.

The ability to move the sear or other parts between like guns is a nice feature of the sear; you can have all your HK guns be full autos, one at a time, and only have one registered item, and one transfer tax to pay, for example. However each sear or conversion kit may require a bit of fine tuning to the host gun to make it work, this swapping feature may be overrated, depending on the design of the sear and of the host gun.

NFA Branch desires that folks who install sears into guns where the sear is not very accessible, HK guns in particular, tell them the make, model and serial number of the gun into which

the sear is installed. This makes it easier on them, as they do not have to open the gun up to see the sear, if they know that gun is the one with the sear in it. This is called "marrying" the sear to the gun. It is especially useful when the host semi-auto has been modified so as to make it potentially illegal without the sear, like putting a shoulder stock on an H&K SP-89 pistol, or cutting the barrel of an HK-94 to less than 16 inches. You may "divorce" the two, but don't if the host gun will end up an unregistered short barreled rifle, or other unregistered NFA weapon. Often this marriage info is in box 4(h) on the Form 4, so anyone who looks at the paperwork can see the sear is in that gun; local law enforcement, for instance.

If the gun is a sear conversion you may not alter the receiver to full auto configuration, in particular you may not install a push pin lower on your HK. You may alter a push pin lower shell to accommodate your clip-on trigger pack, so it looks authentic, but don't alter the receiver. You may also alter one of the MG burst packs to fit on your semi-auto receiver, provided it is also modified internally so it no longer just uses the MG trigger pack with the original MG trip. Making an unaltered MG trigger pack fit the semi-auto is making a new conversion device; some registered HK conversion parts are MG trigger packs modified to fit right on the semi-auto receiver.

This is an area with a variety of items registered; many in the frenzy of registration after the 1986 making ban was being passed into law, similar to the frenzy of making seen in 1994 during Congressional deliberation on the ban on new manufacture of "semi-automatic assault weapons" for sale to civilians.

A few notes: before November, 1981, BATF did not consider the drop-in AR-15 sear to be a machine gun in itself, because you had to replace all the internal parts with M-16 parts, as well as install the sear, and thus it didn't convert the AR by itself. However in ATF Ruling 81-4, BATF changed its mind about what a thing had to do in order to be a conversion part, grandfathered all AR sears made before the ruling, and decided all made after that needed to be registered. HOWEVER, the fact that the sear itself, if made before 11/81, and sold through ads in Shotgun News to this day (they sure made a lot of 'em back then, or maybe not) is not required to be registered, DOES NOT mean you may install it in an AR-15, or even possess it with an AR-15 rifle. Either scenario is a machine gun also, and also needs to be registered. Except of course you cannot register it anymore, and thus it is just a millstone, waiting to send you to a federal prosecution. And that exact scenario has been the basis for many prosecutions.

Likewise an M-1 carbine receiver and an M-2 carbine receiver are identical, and all the parts to convert a gun from an M-1 to an M-2 are available on the surplus market. HOWEVER having all the parts, and an M-1, or even just some of the M-2 parts together, is a machine gun under the NFA. While the US Supreme court decision in the Staples case should help to protect truly innocent possessors of such things, you are playing with fire.

A registered sear is not a license to use it to convert any gun you wish. BATF takes the position that installing a HK sear in any gun but an HK, or a HK clone gun (like one of the Greek or Portuguese G-3 semi-autos) is not allowed, and is making an unregistered machine gun. So while you can put it in any HK type gun, don't put it in something else, like an FNC or AK (it has been done) thinking the sear is a license to convert any gun you can shoehorn it into. Or if you want to do that, take BATF to court first, don't just do it.

DEWATs

A DEWAT is an unserviceable gun that has an intact receiver, thus, as of the GCA of 1968, it is a machine gun. In 1955 the ATT decided that a gun that was a registered war souvenir (or for a time, a contraband unregistered gun) could be removed from the coverage of the NFA if it was rendered unserviceable by steel welding the breech closed, and steel welding the barrel to the frame. All this was to be done under the supervision of an ATT inspector. See Revenue Ruling 55-590. The gun became a wall hanger, ornament, like parts sets now. This was not the same as an unserviceable gun, which was still subject to the NFA, but exempt from the transfer tax. These steel welded guns were DEWAT's. DEWAT stands for DEactivated WAr Trophy; it was regularly done for servicemen who wished to bring home NFA war souvenirs. It was also done to WWI and WWII era guns imported as surplus by companies like ARMEX International, and Interarmco, and then sold through the mail in ads in gun magazines. The glory days before 1968. A DEWAT must now be registered to be legal, there is no longer a legal difference between a DEWAT and an unserviceable weapon. A few states only allow individuals to own DEWAT machine guns, Iowa comes to mind.

A DEWAT machine gun transfers tax free, as a "curio or ornament", on a Form 5. To be a DEWAT, a gun should have a steel weld in the chamber, and have the plugged barrel steel welded to the frame or receiver. Having said that, a gun may be registered as unserviceable and not be de-activated in this manner. It may have cement or lead in the barrel, or a piece of rod welded, soldered or brazed in the barrel. Despite the repeated warnings from ATT, apparently DEWATs were made or imported that did not have steel welds. And a weapon registered as "unserviceable" before 1968 was not held to these standards. One (ostensible) reason machine gun receivers were redefined as machine guns in 1968, thus bringing DEWATs under the NFA regulation, was that folks were regularly and easily making their DEWATs live guns w/o complying with the law. Some barrel plugs were so poor they would fall out with little coaxing. The thing with buying a DEWAT is that it may be easy to make it live, or it may be hard. The gun may be pristine or rather beat up. They usually cost less than a live gun because they will not be 100% original if made live. However if you just want a shooter buying a DEWAT and getting it made live can often be cheaper than an original gun. DEWAT guns are best not bought sight unseen, unless you do not wish to make it live, but have it as a wall hanger. The exact state and extent of the welds will determine how hard it is to make live. However if you want a wall hanger, a dummy gun is much cheaper, and

requires no paperwork. They can look totally authentic. They do not have an intact machine gun receiver, but a partially machined dummy receiver.

To re-activate the gun, ATF requires you file a fully completed Form 1 (ie you get the gun on a Form 5, including the law enforcement certification, photo and fingerprints. You have to do all that again for the Form 1), and pay the $200 tax the gun was exempt from before. Then when that is returned approved you can break the welds off the receiver, and install a replacement barrel, or get the weld out of the barrel, if a spare cannot be found. In the alternative, a Class 2 manufacturer may re-activate the gun, and file a Form 2 reflecting the gun is now live. ATF considers re-activating to be manufacturing, and requires the re-activator to mark the gun with his name and address, whether done on a Form 1 or Form 2. If you sent your DEWAT to a Class 2 to make live he would have to transfer it back to you on a fully completed Form 4, as a tax paid transfer. These procedures are not in the NFA law nor the regulations. They are apparently based in part on the Revenue Rulings that created the DEWAT program in the 1950's. As a DEWAT was not a NFA firearm, before 1968, requiring the making tax made sense then as you were making a machine gun out of something that was the equivalent of a door stop, legally. Now that is not true, the DEWAT is a machine gun, and no making tax should attach, as you are not "making" anything, merely changing the gun from unserviceable to serviceable.

Folks who are around NFA guns for very long will find there are still a lot of DEWAT guns that were never registered during the Amnesty, and are now contraband unregistered machine guns. Folks have them in closets, up over the mantle... They can be stripped of parts, to make a parts set, and have the receiver thrown away. Torch cutting the receiver into 4 or more parts may be acceptable; you would have to contact ATF to find out the current standard for "de-mill"ing (short for demilitarize) a receiver; a de-milled receiver is not a firearm, it is scrap metal. A receiver only cut in half may well not be scrap; ATF has prosecuted folks where they could duct-tape together the receiver and get the gun to fire. Best to check on this before proceeding. The U.S. v. Staples, - U.S. - (1994), decision should end such ridiculous prosecutions, now the feds must prove, beyond a reasonable doubt, you knew the gun was subject to the NFA, ie you knew it was a machine gun, that it could fire more than one shot with a pull of the trigger, and so on. But even if there were no prosecution, you could lose the receiver and or parts to a forfeiture, if ATF though it was in fact a machine gun, and it was not registered.

ANY OTHER WEAPONS

An AOW is:
"...any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12" or

more, less than 18" in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any weapon which may be readily restored to fire. Such term shall not include a pistol or revolver having a rifled bore, or rifled bores, or weapons designed, made or intended to be fired from the shoulder and not capable of firing fixed ammunition." 26 USC sec. 5845(e).

Thus the question to be answered in deciding if a weapon is an AOW would be, does it fit into any of the three categories below:

1) Is the weapon both not a pistol or revolver, and capable of being concealed on the person?

2) Or is it a smooth bore pistol or revolver? Examples of this include the H&R Handy-Gun, or Ithaca Auto-Burglar gun. This does not include weapons made from a shotgun. That would be a short barreled shotgun. The receiver of a smooth bore pistol, in order to be an AOW, must not have had a shoulder stock attached to it, ever. The shoulder stock attachment deal on some H&R Handy Guns, with a stock, will make them into a short barreled shotgun.

3) Or is it a combination gun, a shoulder fired gun with both rifled and smooth barrels between 12" and 18" long, and which has to be manually reloaded? Examples of this include the M-6 military survival gun, with a single shot barrel in .22 Hornet, and a companion .410 shotgun barrel, as well as some models of the Marble's Game Getter.

Weapons that fit the first category above are commonly called gadget guns; pen guns, stapler guns, cane guns, alarm clock guns, flashlight guns, the list of objects is pretty long. A few have been removed from the scope of the law because their collector status makes them unlikely to be misused; original Nazi belt buckle guns for example. See the C&R list for these.

If a gun has rifled barrel(s) of less than 16", and it has never had a shoulder stock it would be a pistol, unless it either has no grip at an angle to the bore, or if it has more than one grip. ATF has made the questionable decision that a handgun with more than one grip is an AOW. This is based on the gun a) being concealable on the person, and b) not meeting the definition of a "pistol" in the regulations promulgated under the NFA, since they say a pistol has a single grip at an angle to the bore. However, at least one federal court has decided that if the grip is added later, the gun is not "originally designed" to be fired by holding in more than one grip, and thus putting a second grip on a pistol does not make it an AOW. Whether ATF will regard the decision as binding beyond that case is unknown, I would doubt it. The case is U.S. v. Davis, Crim No. 8:93-106 (S.C. 1993) (Report of Magistrate, June 21, 1993). By the same token in mid 1996, ATF decided that "wallet" holsters for small guns, from which the gun could be fired, somehow are AOW's. This would affect, for example, the North American Arms mini-revolver and the wallet holster NAA sold for the gun, as an accessory. ATF seems to be thinking that the grip has disappeared, and thus it fits into the first category. This strikes me as bizarre and

stupid, and I suspect the courts will have their shot at it, given how common the wallet holsters are. What if you put the gun in a purse, from which it can be fired? A folded up newspaper? How are those different than a wallet holster?

> 27 CFR sec. 179.11 - "pistol. A weapon originally designed, made and intended to fire a projectile (bullet) from one or more barrels when held in one hand, and having: a) a chamber(s) as an integral part(s) of, or permanently aligned with, the bore(s); and b) a short stock designed to be gripped by one hand at an angle to and extending below the line of the bore(s). The term shall not include any gadget device, any gun altered or converted to resemble a pistol, any gun that fires more than one shot without manual reloading, by a single function of the trigger, or any small portable gun such as: Nazi belt buckle pistol, glove pistol, or a one-hand stock gun designed to fire fixed shotgun ammunition."

There is also a revolver definition, but it does not add anything except a provision for guns with revolving cylinders, rather than permanent chambers.

Note that this definition is only in the rules for the NFA, and not the GCA. It is designed to interact with the AOW definition. For example even though this definition excludes such things as the .410 T/C Contender pistol from the pistol definition, it is also not an AOW as it has a rifled bore. And it is also a handgun under the GCA. The NFA statute does not define "pistol" or "revolver". I think that excluding handguns designed to be fired when held in two hands is not necessarily justifiable. But it allowed them to declare that an HK SP-89 pistol with a K grip is an AOW. As is an M-11/9 or TEC-9 with a foregrip. The Auto Ordnance 1927-A3 pistol is apparently exempted, for historical authenticity.

DESTRUCTIVE DEVICES

> 26 U.S.C. sec. 5845(f) "The term destructive device means
> 1) any explosive, incendiary or poison gas
> A) bomb
> B) grenade
> C) rocket having propellant charge of more than four ounces
> D) missile having an explosive or incendiary charge of more than one-quarter ounce
> E) mine, or
> F) similar device
> 2) any type of weapon by whatever name known which will, or may be readily converted to, expel a projectile by the action of a explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary or his delegate finds is generally recognized as particularly suitable for sporting purposes; and

3) any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled. The term 'destructive device' shall not include any device which is neither designed nor redesigned for use as a weapon; any device although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device; surplus ordnance sold, loaned or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685 or 4686 of title 10 of the United States Code; or any other device which the Secretary of the Treasury or his delegate finds is not likely to be used as a weapon, or is an antique or is a rifle which the owner intends to use solely for sporting purposes."

Secretary in the above refers to the Secretary of the Treasury, unless it says otherwise. The fee for the FFL to deal in DD's is $1000 a year (type 09), and one must also be a special taxpayer, add another $500 a year. Making them requires a different $1000 a year FFL (type 10), although an individual may make them on a Form 1, tax paid ($200). Transfers require the whole routine just like full-autos; a form 4, $200 tax, a law enforcement sign-off, pictures and fingerprints. Most class 3 dealers don't have the $1000 a year FFL to deal in DD's. Note that antiques are excluded. Thus the definition of an antique NFA firearm is important.

26 USC sec. 5845(g) "Antique firearm.-The term 'antique firearm' means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replicas thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade."

Some examples of what is a DD and what is not:

Muzzle loading cannon - NOT, as it is an antique design, unless it has some special features allowing breech loading.

Explosive grenade - is a DD

Molotov cocktail - is a DD

M-79 or M-203 40mm grenade launcher - is a DD

Smooth bore 37mm projectile launcher - not a DD. Not even a title 1 firearm. This item falls under the "not a weapon" (signaling device) exception, I believe. Generally a large bore device for which no anti-personnel ammo has ever been made will NOT be a DD. This used to be true of the 37mm guns. However, according to ATF, some folks have started making anti-personnel rounds for these guns, and ATF has ruled that possession of a 37mm launcher and a bean bag or rubber shot or similar round is possession of a DD, and at that point the launcher needs to be

registered. Put another way, before you make or buy anti-personnel rounds for your 37mm launcher, register it as a DD. The rounds themselves, not being explosive, incendiary or poison gas, are not regulated in themselves either. It is just the two together. See ATF Ruling 95-3.

40mm grenade for an M-79 or M-203 - a DD.

Non-explosive 40mm practice ammo - not a DD. Commercial making of it would require a type 10 FFL though, as although the ammo is not itself classified as a DD, making ammo for a DD requires the FFL.

Non-sporting 12 gauge shotgun - is a DD, because it has a bore over 1/2", and is not exempted unless it meets the "sporting use" test. Check out the case Gilbert Equipment Co., Inc., v. Higgins, 709 F. Supp. 1071 (D. Ala. 1989) for how the sporting use test has been re-interpreted from what it meant when the law was enacted to having ATF be arbiters of what is "sport".

Flame Thrower - not a DD, nor even a firearm. Unregulated as to possession, under federal law. Great way to clear snow off the driveway.

Japanese Knee Mortar - A DD. Even though there is no available ammo for it, explosive or otherwise, and hasn't been since 1945, because anti-personnel ammo was made for it in the past, it is a weapon. As it has a bore over 1/2" and isn't sporting, it is a DD.

SOUND SUPPRESSORS

While the statute calls these devices "silencers" or "mufflers", the US NFA industry term is "sound suppressor", as the word silencer has been given a negative connotation, and because it is inaccurate, as these devices do not eliminate all sound from firing a gun. However you can point the folks who get all high and mighty about the use of the word "silencer" to this definition; it is the legal term.

> 18 USC sec. 921(a)(24) "The term 'firearm silencer' or 'firearm muffler' means any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication."

As can be seen this covers improvised sound suppressors, and component parts of a sound suppressor. There is no thresh hold level of sound reduction for something to fall under this definition. ATF used to require the device "appreciably" lower the sound (see Revenue Ruling 57-38); now the working definition seems to be anything that traps gas from the muzzle of the gun, or from porting of the barrel, is a sound suppressor. In general recoil compensators and flash hiders do not fall under this definition, but some designs could fall into the category. As with any borderline device the thing to do is to get a written opinion from the Technology Branch of ATF. It is what they exist to do.

Note that the silencer definition applies only to devices

for firearms, i.e. powered by an "explosive". An air gun silencer is not covered. But if it can be used on a firearm it would be. Thus an airgun silencer permanently attached to the airgun, or too flimsy to be used on a firearm, should be exempt. If you have an interest in pursuing this line of thought submit a sample or drawings to ATF Tech. Branch. I am not aware of any airgun silencer currently made, or determined to be exempt from this definition. But clearly there is room under the definition for such a gadget. Likewise, since antique guns, as defined in the GCA are not "firearms", a silencer for such a gun is not, or should not be, covered. Perhaps one fitted permanently to a pre-1899 gun? The mind reels.

SHORT BARRELED RIFLES

A short barreled rifle (SBR) is defined in the law as:
26 USC sec. 5845(a)
* * * *
(3) a rifle having a barrel or barrels less than 16 inches in length;
(4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; * * *

The NFA law also defines "rifle":

26 USC sec. 5845(c) "The term 'rifle' means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned or made or remade to use the energy of an explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

Thus you can see why a machine gun is not also a short barreled rifle; it is not a rifle. And you can see why a barrel is not subject to regulation, or registration, in itself. It is a barrel, it cannot discharge a shot. A receiver alone is also not a short rifle; a short rifle is only a complete weapon that fits into the length parameters outlined.

ATF takes the position that this includes any combination of parts from which a short barreled rifle can be assembled. And they said this included a set of parts with dual uses. In the Supreme court case of Thompson/ Center Arms v. US, - U.S. - (1994) ATF said it was a set consisting of a receiver, a 16"+ barrel, a pistol grip stock, a shoulder stock, and a barrel less than 16 inches long. The idea of the kit was that you needed only one receiver, and you could have both a rifle and pistol in one gun. While making a pistol out of a rifle is making a short rifle, ATF has long approved of converting a pistol into a rifle, and then converting it back into a pistol, that was not an issue. T/C made one set on a Form 1, then sued for a tax refund, claiming the set was not a SBR, unless it actually was assembled with the shoulder stock, and short barrel, something they instructed the purchaser of the set not to do. The Supreme court disagreed with ATF, and agreed

with Thompson/Center.

The court said that a set of parts was not a short barreled rifle, unless the only way to assemble the parts was into a short barreled rifle. As this set had a legitimate, legal, use for all the parts it was OK. However they also approved of lower court cases holding that the sale by one person, at the same place, of all the parts to assemble an AR-15, with a short barrel, was sale of a SBR, even if they weren't assembled together at the moment of the bust, and had in fact never been assembled. See U.S. v. Drasen, 845 F.2d 731 (7th Cir. 1988). This was because the only use for the parts was a SBR. If the person in that case also had a registered M-16, then there would be a legitimate use for the SMG barrel, and there shouldn't be a problem. And the Court agreed, of course, that a fully assembled rifle with a barrel less than 16", or an overall length of less than 26" was also subject to registration. Although it was not addressed in the case, the rule is that an otherwise short barreled rifle that is very easily restored to firing condition (readily restorable); e.g., one missing a firing pin, but for that pin one may substitute a nail or other common object, is also subject to the law.

Therefore, if one has a semi-auto HK-91, and an HK-93 converted with an auto sear, and having a barrel less than 16 inches, one may not remove the sear from the HK-93 and put it on the HK-91. That would leave the semi-auto pack from the HK-91, and the receiver/barrel combination from the HK-93; a set of parts for assembling a rifle, and said rifle would have a short barrel, and further not be registered. I think that if one disposed of all trigger packs one had, except the one the sear was in, one could legally swap it between the rifles, without having to register the HK-93 as a SBR. The leftover HK-93 receiver and barrel setup would not be capable of firing a shot, with the parts in the possession of the owner, except with the sear converted pack, and using that on it would be OK. HOWEVER, I think ATF would disagree, would probably claim the resulting half of a gun was an "unservicable" short rifle or some other non-sense, and would prosecute should such an arrangement be attempted. If someone is serious about doing this, they need to ask Technology Branch if they will go along with the reasoning outlined. If they didn't, one would need to sue, rather than have to fight it in a criminal, rather than civil, context.

APPENDIX
STATE NFA RESTRICTIONS

Here is my attempt to list what state allows what in terms of NFA weapons. The "Y" indicates state law allows private individuals to own the weapon in question. Most of the "Y" states require the weapons be possessed in compliance with federal law to be legal under state law. Some of the "N" states may allow only police officers to possess them, or dealers, or neither. Basically if the privileged class was so narrow, by statute, I said "N". In many states the class of folks able to own NFA weapons is narrow by practice (California), or because no law enforcement officers will sign the certification needed for a transfer to an individual. Some of the "N" states may also have

grandfathered weapons, the "N" applies to a current transaction. Some "N" states may also allow unserviceable weapons. Some states may regulate one or more of these weapons as handguns.

KEY
MG - machine gun
SI - sound suppressor (silencer)
SR - short barreled rifle
SG - short shotgun
AOW - any other weapon
LBDD - large bore destructive device
EXPDD - explosive, incendiary or poison gas destructive device

state	MG	SI	SR	SG	AOW	LBDD	EXPDD	Comments
AK	Y	Y	Y	Y	Y	Y	Y	
AL	Y	Y	N	N	Y	Y	?	
AR	Y	Y	Y	Y	Y	Y	?	(state registration of pistol cal. MG's over .30)
AZ	Y	Y	Y	Y	Y	Y	Y	
CA	Y	N	Y	Y	Y	Y	Y	(requires discretionary and rarely issued permit for mg, lbdd or expdd from state Dept. of Justice; no AOW pen guns; C&R sg, sr only)
CO	Y	Y	Y	Y	Y	Y	Y	(requires state permit for expdd)
CT	Y	Y	Y	Y	Y	Y	?	(no select fire mg's-full auto's only, after 1993 assault weapon ban, state registration of mg's)
DE	N	N	Y	N	Y	Y	N	(no smooth bore pistol AOW's)
FL	Y	Y	Y	Y	Y	Y	Y	
GA	Y	Y	Y	Y	Y	Y	Y	(no incendiary expdd's)
HI	N	N	N	N	N	N	N	(A clean sweep!, the only state like this)
IA	N	Y	Y	Y	Y	Y	Y	(only si, sr, sg, lbdd and expdd designated as collector's items by the Comm'r of Public Safety, basically the C&R list)
ID	Y	Y	Y	Y	Y	Y	Y	
IL	N	N	N	N	Y	?	N	
IN	Y	Y	Y	N	Y	Y	N	
KS	N	N	Y	N	Y	Y	?	
KY	Y	Y	Y	Y	Y	Y	?	
LA	Y	Y	Y	Y	Y	Y	Y	(mg's require a permit to purchase - war relics only; mg's, sr, si, sg and some expdd's require a permit to purchase)
MA	Y	N	Y	Y	Y	Y	N	(license for mg's required)
MD	Y	Y	Y	Y	Y	Y	N	(mg's must be registered)
ME	Y	Y	Y	Y	Y	Y	Y	
MI	Y	Y	Y	Y	Y	Y	Y	(apparently approved form 4 suffices for "license" for mg, si or some expdd (bomb) despite AG opinion reprinted in ATF Green Book; no incendiary expdd; C&R sr, sg only)
MN	Y	N	Y	Y	Y	Y	?	(C&R mg, sg only, registration required)
MO	Y	N	Y	Y	Y	N	N	(C&R mg, sr, sg only to non FFL holders, C&R FFL holders any mg, sr, sg)
MS	Y	N	Y	Y	Y	Y	Y	
MT	Y	N	Y	Y	Y	N	N	(pistol cal. mg's over .30 must be registered with state)

NE	Y	Y	Y	Y	Y	Y	N
NC	Y	Y	Y	Y	Y	Y	Y (sheriff's permit required for mg's; must be FFL holder (including C&R) or must be for "scientific or experimental purposes" for a mg, si, sr, sg lbdd and expdd)
ND	Y	Y	Y	Y	Y	Y	Y (fed. "licensees" required to register mg's, si, expdd with state when possessed for "protection or sale")
NH	Y	Y	Y	Y	Y	Y	Y
NJ	Y	N	Y	N	Y	N	N (mg requires discretionary and rarely issued permit from state court)
NM	Y	Y	Y	Y	Y	Y	Y
NV	Y	Y	N	N	Y	Y	Y
NY	N	N	N	N	?	Y	N (some pen guns may be allowed)
OH	Y	Y	Y	Y	Y	Y	Y
OK	Y	Y	Y	Y	Y	Y	Y
OR	Y	Y	Y	Y	Y	Y	Y (no incendiary expdd's)
PA	Y	Y	Y	Y	Y	Y	N
RI	N	N	N	N	Y	Y	?
SC	N	Y	N	N	Y	Y	?
SD	Y	Y	Y	Y	Y	Y	Y
TN	Y	Y	Y	Y	Y	Y	?
TX	Y	Y	Y	Y	Y	Y	Y
UT	Y	Y	Y	Y	Y	Y	Y
VA	Y	Y	Y	Y	Y	Y	Y (state registration of all mg's)
VT	Y	N	Y	Y	Y	Y	Y
WA	N	Y	N	N	Y	Y	N (silencer may not be used on a gun)
WI	Y	Y	Y	Y	Y	Y	Y (permit required for expdd, no incendiary expdd's; no pistol cal mg's w/o permit)
WV	Y	Y	Y	Y	Y	Y	?
WY	Y	Y	Y	Y	Y	Y	?

A Note about NFA Weapons and California

As a general rule the definitions of NFA weapons, as regulated in California, track exactly the federal definitions, and categories.

Cal. Penal Code Sec. 12020(a) prohibits the possession of, among other things, AOW's (Any other Weapons) and short shotguns and short rifles. Subsection (b) lists exemptions to the application of (a).

Subsection (b)(7) of section 12020 exempts any "firearm or ammunition" lawfully possessed under federal law and on the C&R list.
Subsection (b)(8), exempts ALL AOW's except pen guns.
Subsection b(2) is the exemption for the movie permit for short shotguns and short rifles with the procedure for its issuance found at section 12095.

Californians can legally possess any AOW, except a pen gun, as long as it is possessed in compliance with federal law. Likewise they can possess any C&R listed short rifle or short shotgun.

Short shotguns and short rifles are defined at (c)(1) and (c)(2) respectively; the definitions are essentially the same as federal law. HOWEVER, unlike the feds, California courts have

ruled that the length of a rifle with a folding stock is measured with the stock folded, not extended, as the feds do. So a gun that is not a short rifle under federal law may be one under California law. See People v. Rooney, 17 Cal.App.4th 1207 (1 Dist. 1993).

Any firearm whose possession is otherwise prohibited by subsection (a) is ok, under b(7), if the gun is a C&R one and lawfully possessed under federal law. This would not provide an exemption to the requirement for a state permit for a machine gun, as 12020(a) does not regulate mg's. That is section 12220 (ban) and 12230 et seq. (permits). Rules for DD's are at section 12301 et seq. Silencers are regulated at section 12500 et seq. The state Department of Justice has totally discretionary authority to issue permits to possess DD's or machine guns. Civilians are totally prohibited from owning silencers.

To get Calif laws, pending bills and other stuff
ftp to ftp.sen.ca.gov
Or ftp to leginfo.public.ca.gov, and look in /pub/code
/pub/code/pen has the penal code.

ATF Forms and Descriptions, by Category and Number

ATF Forms (by Category)

Title II (All)

Form	Title
1 (5320.1)	- Application to Make and Register a Firearm
2 (5320.2)	- Notice of Firearms Manufactured or Imported
3 (5320.3)	- Application for Tax-Exempt Transfer of Firearm and Registration to Special (Occupational) Taxpayer
4 (5320.4)	- Application for Tax Paid Transfer and Registration of Firearm
5 (5320.5)	- Application for Tax Exempt Transfer and Registration of a Firearm
9 (5320.9)	- Application and Permit for Exportation of Firearms
10 (5320.10)	- Application for Registration of Firearms Acquired by Certain Governmental Entities
5320.20	- Application to Transport Interstate or to Temporarily Export Certain National Firearms Act (NFA) Firearms
5630.6A	- Special Tax Stamp [for SOT]
5630.7	- Special Tax Registration and Return: National Firearms Act (NFA)

Title I Transfers

Form	Title

```
3310.4        - Report of Multiple Sale or Other Disposition of
                Pistols and Revolvers
4473 (5300.9) - Firearms Transaction Record
5300.35       - Statement of Intent to Obtain a Handgun(s)
```

Licensing

```
Form            Title
-----------------------------------------------------------------
7   (5310.12) - Application for License
7CR (5310.16) - Application for License (Collector of Curios and
                Relics)
8   (5310.11) - Federal Firearms License
5300.34       - Questionnaire for Responsible Persons
5300.36       - Notification of Intent to Apply for a Federal
                Firearms License
5300.37       - Certification of Compliance with State and Local
                Law
```

Export/Import

```
Form            Title
-----------------------------------------------------------------
6   (5330.3A) - (Part I) Application and Permit for Importation of
                Firearms, Ammunition and Implements of War
6   (5330.3B) - (Part II) Application and Permit for Importation
                of Firearms [military]
6A  (5330.3C) - Release and Receipt of Imported Firearms,
                Ammunition and Implements of War
```

ATF Forms and Descriptions (in Numerical Order by Form)

```
Form            Title
-----------------------------------------------------------------
1   (5320.1 ) - Application to Make and Register a Firearm
2   (5320.2 ) - Notice of Firearms Manufactured or Imported
3   (5320.3 ) - Application for Tax-Exempt Transfer of Firearm and
                Registration to Special (Occupational) Taxpayer
4   (5320.4 ) - Application for Tax Paid Transfer and Registration
                of Firearm
5   (5320.5 ) - Application for Tax Exempt Transfer and
                Registration of a Firearm
6   (5330.3A) - (Part I) Application and Permit for Importation of
                Firearms, Ammunition and Implements of War
6   (5330.3B) - (Part II) Application and Permit for Importation
                of Firearms [military]
6A  (5330.3C) - Release and Receipt of Imported Firearms,
                Ammunition and Implements of War
7   (5310.12) - Application for License
7CR (5310.16) - Application for License (Collector of Curios and
                Relics)
8   (5310.11) - Federal Firearms License
9   (5320.9 ) - Application and Permit for Permanent Exportation of
                Firearms
10  (5320.10) - Application for Registration of Firearms Acquired
                by Certain Governmental Entities
3310.4        - Report of Multiple Sale or Other Disposition of
```

```
                Pistols and Revolvers
4473 Pt. I     - Firearms Transaction Record - Over the Counter
(5300.9)
4473 Pt. II    - Firearms Transaction Record - Non Over the Counter
(5300.9)
5300.34        - Questionnaire for Responsible Persons
5300.35        - Statement of Intent to Obtain a Handgun(s)
5300.36        - Notification of Intent to Apply for a Federal
                 Firearms License
5300.37        - Certification of Compliance with State and Local
                 Law
5320.20        - Application to Transport Interstate or to
                 Temporarily Export Certain National Firearms Act
                 (NFA) Firearms
5630.6A        - Special Tax Stamp [for SOT]
5630.7         - Special Tax Registration and Return: National
                 Firearms Act (NFA)
      ------------------------------------------------------------
```

[Note the difference between Federal Firearms License TYPE and Special (Occupational) Taxpayer CLASS.]

Federal Firearms Licenses: Types, Fees, and Descriptions

[see 18 USC sec. 923(a), also ATF Form 7 and Form 7CR]

Note: these the ones that I know about; there are undoubtedly others of which I am not aware.

Type	Fee	Description
01	$ 200 /$90	Dealer, Including Pawnbroker, in Firearms Other than Destructive Devices
02		No longer used, was a Pawnbroker dealing in Firearms other than Destructive Devices, eliminated by the Brady law (1994).
03	$ 30	Collector of Curios and Relics
04		? Either 4 or 5 was a dealer in ammunition, eliminated by FOPA in 1986.
05		? No longer used.
06	$ 30	Manufacturer of Ammunition for Firearms Other than Ammunition for Destructive Devices or Armor Piercing Ammunition
07	$ 150	Manufacturer of Firearms other than Destructive Devices
08	$ 150	Importer of Firearms other than Destructive Devices or Ammunition for Firearms other than Destructive Devices, or Ammunition other than Armor Piercing Ammunition
09	$3000	Dealer in Destructive Devices
10	$3000	Manufacturer of Destructive Devices, Ammunition for Destructive Devices or Armor Piercing Ammunition
11	$3000	Importer of Destructive Devices, Ammunition for Destructive Devices or Armor Piercing Ammunition
20	$????	Manufacturer of High Explosives [unconfirmed; see February 1995 issue of Machine Gun News]

Note: fee is for a three year license. For a type 01 FFL it is $200

for the first three years, and $90 for subsequent renewals.

End-of-Document